

Honorable Richard Jones
Honorable James P. Donohue

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

KYLE LYDELL CANTY,

Plaintiff,

vs.

CITY OF SEATTLE, et al.,

Defendants.

NO. 2:16-CV-01655-RAJ-JPD

CITY OF SEATTLE DEFENDANTS'
CONSOLIDATED RESPONSE TO
PLAINTIFF'S MOTIONS [DKTS. 138, 139,
AND 143]

NOTED FOR NOVEMBER 3, 2017

I. RELIEF REQUESTED

Defendants City of Seattle and Officers Marshall Coolidge, Sean Culbertson, Timothy Renihan, and Hancock ("City of Seattle Defendants") file this response to the following motions filed by Plaintiff:

- Plaintiff's Motion and Order Pursuant to LCR 6 [Dkt. 138];
- Plaintiff's Motion and Notice of Extension of Time [Dkt. 139]; and
- Plaintiff's Motion and Notice Pursuant to LCR 40(b) Scheduling Cases For Trial [Dkt. 143].

The City of Seattle Defendants request that Plaintiff's Motions be denied for the reasons set forth herein.

II. STATEMENT OF FACTS

Plaintiff *pro se* has brought this civil rights action against the City of Seattle Defendants, as well as King County and several of its employees. Plaintiff originally filed his complaint on November 5, 2016, and eventually filed an amended complaint on June 1, 2017. Dkts. 5, 38. Plaintiff's Complaint alleges the City of Seattle Defendants violated his rights under the Fourth, Fifth, and Eighth Amendments to the United States Constitution during his detention on a civil commitment warrant. *Id.*

III. STATEMENT OF ISSUES

- (1) Should Plaintiff's motion requesting appointment of counsel and extension of time be denied, because Plaintiff has not shown any reasons why the Court should reconsider its prior decisions on these requests?
- (2) Should Plaintiff's motion for a two-month extension of time to respond to Defendants' motions for summary judgment and dismissal, because Plaintiff has not met his burden to show why he needs additional time to respond?
- (3) Should Plaintiff's request for a jury trial be denied as moot and his advisement regarding trial pursuant to LCR 40(b) be denied as premature?

IV. EVIDENCE RELIED UPON

The City of Seattle Defendants rely on the pleadings and the court's file herein.

V. ARGUMENT

A. The Court Should Deny Plaintiff's Motions Contained in Dkt. 138

Plaintiff moves for appointment of counsel and an extension of time in order to orally argue all motions filed with the Court and to respond to Defendants' motion for summary judgment Dkt. 138, pp. 2-3. Plaintiff's reliance on LCR 6 (Computing and Extending Time) is misplaced as it does not address either appointment of counsel or extending deadlines. Moreover, Plaintiff has previously moved for appointment of counsel and an extension of deadlines due to his incarceration. *See* Dkt. 47 (extension of deadlines) and Dkt. 103

(appointment of counsel). The Court previously denied these requests. *See* Dkt. 81, pp. 1-2 (extension of deadlines); Dkt. 133, pp. 4-6 (appointment of counsel). To the extent these recent motions are motions for reconsideration, Plaintiff has failed to satisfy any of the criteria for motions for reconsideration. *See* W. Wash. LCR 7(h)(1) (showing manifest error in the prior ruling or new facts or legal authority which could not have been previously brought to the court's attention); LCR 7(h)(2) (plainly labeled as motion for reconsideration and brought within 14 days). Even if treated as renewed motions, Plaintiff has not shown any new facts or legal authority to support his request for counsel or extension of time. Plaintiff's motions contained in Dkt. 138 should therefore be denied.

B. The Court Should Deny Plaintiff's Motion Contained in Dkt. 139

Plaintiff next requests a two-month extension in order to respond to Defendants' motion to dismiss and motion for summary judgment. Dkt. 139, p. 2. Plaintiff has filed, ostensibly in support of this motion, a declaration alleging he was unable to access his legal file and legal materials for a month after arriving at the Shelton correctional facility on August 11, 2017. Dkt. 141 (Plaintiff's Fourth Declaration to Honorable Richard A. Jones). However, the City Defendants filed their motion to compel or dismiss and the County Defendants filed their motion for summary judgment on September 29, 2017—after the period Plaintiff claims to lack access to legal materials. *See* Dkt. 121 (City Defendants' Motion to Dismiss or Compel) and 123 (County Defendants' Motion for Summary Judgment). Plaintiff has not met his burden either under W. Wash. LCR 7(j) or Fed. R. Civ. P. 56(d) to demonstrate why he is entitled to either relief from the deadline to respond to Defendants' motions or a continuance for further discovery. Plaintiff's motion should therefore be denied.

C. The Court Should Deny Plaintiff's Motion Contained in Dkt. 143

Plaintiff also demands a jury trial under LCR 38 and advises the court of his readiness for trial and the estimated length pursuant to LCR 40(b). Dkt. 143. This matter is already

1 scheduled for jury trial as the City and County Defendants have already submitted jury
 2 demands for this matter. *See* Dkt. 60 (City Defendants' Answer to Complaint for Damages
 3 and Jury Demand) and Dkt. 67 (King County's Demand for Jury of Twelve). As previously
 4 noted, the Court has not yet issued a pre-trial order, which will address trial scheduling issues.
 5 *See* Fed. R. Civ. P. 16(b); LCR 16(e). At this time, Plaintiff's jury trial demand is moot and
 6 his advisement of his readiness for trial is premature

7 **VI. CONCLUSION**

8 For all the foregoing reasons, Plaintiff's motions contained in Dkts. 138, 139, and 143
 9 should be denied.

10 DATED this 30th day of October, 2017.

11
 12 s/ Amee J. Tilger

13 AMEE J. TILGER, WSBA #34613

14 Freimund Jackson & Tardif, PLLC

15 701 5th Avenue, Suite 3545

16 Seattle, WA 98104

17 Telephone: (206) 582-6001

18 Facsimile: (206) 466-6085

19 ameet@fjtlaw.com

20 Attorneys for Defendants City of Seattle,

21 Officer Marshall Coolidge, Sean Culbertson,

22 Timothy Renihan and Officer Hancock

CERTIFICATE OF SERVICE

I hereby certify that on October 30, 2017, I caused to be electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Pro se Plaintiff, Kyle Lydell Canty, Inmate #401358 WA State Department of Corrections P.O. Box 900 Shelton, WA 98584	(X) Electronic Service
Samantha D. Kanner Deputy Prosecuting Attorney King County Prosecuting Attorney's Office 500 Fourth Avenue, 9 th Floor Seattle, WA 98104	(X) Electronic Service

DATED this 30th day of October, 2017, in Seattle, Washington.

s/Kathie Fudge
KATHIE FUDGE, Legal Assistant to
GREGORY E. JACKSON
701 5TH Avenue, Suite 3545
Seattle, WA 98104
kathief@fjtlaw.com